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SECRETARY

RICHARD B. ROSENBLATT
DIRECTOR

February 21, 2003

The Honorable James E. DeGrange, Sr., Chair
Subcommittee on Public Safety Transportation, and Environment
Miller Senate Office Building, Room 4-A
11 Bladen Street
Annapolis, MD 21401 - 1991

Re: DPDS Federal Issues
Relating to Offender Rights

Dear Senator DeGrange:

The conditions of confinement within the Division of Pretrial Detention and Services (DPDS), including both the physical environment and the services available, have come under Federal scrutiny by the U.S. District Court for the District of Maryland and the U.S. Justice Department. Inasmuch as the Director of the Patuxent Institution serves as the Director of Mental Health Services for the Department, and inasmuch as mental health issues are substantially implicated within this scrutiny, I have been asked to address the request for information relating to these federal actions on behalf of DPDS.

U.S. District Court for the District of Maryland and the Women's Detention Center

The Baltimore City Detention Center (BCDC) of the Division of Pretrial Detention and Services (DPDS) has been under the auspices of Federal Court oversight for over 20 years relating to the conditions of confinement and overpopulation. The case is currently referred to as Duval v. Glendening, Civil No. JFM-94-2541. The latest challenge to the conditions of confinement within the Baltimore City Detention Center are related to the Women's Detention Center (WDC). The gravamen of the complaint was that the facility was unconstitutionally hot during the summer.

In an effort to avoid litigation, and in recognition of the fact that conditions in WDC on hot, summer days were extreme, counsel for the Department and counsel representing the inmates entered into negotiations. The parties agreed that the facility was not unconstitutionally hot as to all detained women, but only those who had medical or mental health conditions that made the women with the conditions particularly susceptible to heat. Thus, on August 22, 2002, the Federal Court entered an Order, consented to by the parties to resolve the unconstitutional situation. Under the Order, the State was required to screen by interview every woman within twelve hours of arrival at WDC to determine whether identified health conditions exist that would make the inmate particularly susceptible to heat related injury. This procedure is to be in effect from May 1 through September 30 of each calendar year. When an inmate is identified by the screening process as being heat sensitive, the inmate is to be housed in air-conditioned housing or provided with heat relief, depending upon the degree of heat sensitivity.

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The entry of this Order requires adjustment of the intake process. The standard operating procedure at DPDS for the booking of new inmates included medical screening questions, but the questions were asked by custody arrest booking officers rather than medically trained personnel. The Federal Court Order changes the standard procedure for women to require the presence of medically trained personnel on a seven days per week, 24 hours per day basis to screen the female arrestees. Further, the Order necessitates the creation of air-conditioned dormitories to accommodate "at-risk" women detainees.

The Order further necessitates supplementation of the mental health staff. Despite being medically trained, the medical assistants who will screen the incoming women are not trained as mental health professionals. Because severe anxiety and many medications prescribed for mental health conditions are particularly likely to lead to dehydration in extreme heat, mental health professionals are required around the clock to support the mandated screening process.

Once medical conditions have been detected through the screening process, they cannot ethically or legally be ignored without treatment. Prior to the legally mandated screening, medical conditions would go undetected until the intake physical exam occurred on the seventh day of detention. Therefore, the immediate screening process necessitates the availability of additional medical personnel for the treatment of disclosed conditions to fully comply with the Duvall v. Glendening order at WDC.

Until capital improvements to WDC are made to bring summer temperature conditions within acceptable limits, these measures will have to be continued.

Investigation by the U.S. Department of Justice Civil Rights Division

By letter of August 13, 2002, the Civil Rights Division of the U.S Department of Justice (DOJ) reported the results of an investigation pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 to then-Governor Parris N. Glendening. Based on tours of the facility by DOJ experts during December 2000 and January and April 2001, the report concluded that certain conditions at the Baltimore City Detention Center (BCDC) and services throughout the Division of Pretrial Detention and Services (DPDS) violate the civil rights of inmates. One hundred and seven recommendations were included in the report covering such issues as fire safety, medical care, mental health, sanitation, inmate exercise and out of cell time, custody of juveniles, and education.

Following receipt of the report, Department of Public Safety and Correctional Services (DPSCS) officials and counsel from the Maryland Attorney General's office reviewed the recommendations. Some of the recommendations were rejected as beyond the scope of DOJ authority; others were rejected as factually inaccurate; still others were rejected as insufficient to constitute a constitutional violation. A majority of the recommendations, however, remained. An assessment of the remaining

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recommendations reflected that they could be dichotomized into actions that required little or no funding and actions requiring significant expenditures of funds. Where possible, action has already been taken to address some of the findings.

At the top of the list of actions that required funding were improved mental health and medical care. A private medical provider is the predominant source for medical and mental health services in the Department. The current medical contract for the Baltimore region, which includes DPDS, is based on an invalid assumption. The assumption was that arrestees would be healthy enough to complete the booking process at the Central Booking and Intake Facility (CBIF), and that arrestees would be booked at such a pace that medical care would not be required. In other words, medical services at CBIF could be limited to an intake physical examination. This assumption has proven to be incorrect resulting, according to DOJ, in insufficient medical services at CBIF. Upgraded medical staffing is required to remedy the alleged deficiency.

A primary concern of the DOJ was the inadequacy of mental health services at intake. The total absence of psychiatric services in CBIF at the time of the DOJ inspection tour left mentally ill inmates in need of medication and counseling services. Inmates could expect to wait to see a psychiatrist for up to a month or more at the time of intake. Twenty hours of psychiatry services were diverted from other locations within the Baltimore region following the "exit interview" of the DOJ mental health expert to help address this issue. However, this step was insufficient to meet all but emergency needs and created new shortages in the region to go with the other shortages identified by DOJ within DPDS. In addition to the lack of services at CBIF, the expert cited a lack of psychiatric hours at the Women's Detention Center (WDC), within the mental health acute unit (Inpatient Mental Health Unit or IMHU), and services for juveniles generally.

The DOJ expert also cited the inadequacy of mental health screening at CBIF. The DOJ felt it was insufficient for a custody arrest booking officer to ask a series of questions intended to elicit whether an arrestee suffered from mental illness or was suicidal. The insufficiency of the questioning was exacerbated by having a single mental health professional working day shift on Monday through Friday as the only person capable of receiving the referrals from the custody officers to make triage assessments for mental health.

The DOJ was concerned about the initial screening process for the assessment of medical needs, as well as mental health needs. The DOJ was particularly concerned that arrestees with chronic conditions (such as hypertension and diabetes) were going without medication for periods in excess of a week.

The medical experts in the Department could not take issue with many of the findings and recommendations of the DOJ. Thus, a plan has been devised to implement improvements to the medical services delivery system. The plan will address the mental health needs in fiscal year 2004 and the medical needs in future years.

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Highlights of the proposed plan include:


- Perpetuation of the mental health professional on duty at CBIF on a 24/7 basis that carries over from the WDC corrective action.
- A full 8 hour shift, seven days per week psychiatrist at CBIF to make immediate diagnoses with respect to mental health needs and to ensure that there is no delay in receipt of medication.
- An increase of psychiatric hours throughout BCDC with particular attention to the inpatient mental health unit, the Women's Detention Center, and the "juvenile" population at the facility.
- Medical triage on a 24/7 basis by a mid-level medical provider at the "front door" of CBIF to identify inmates with immediate medical need.
- Transfer of the CBIF function of intake screening by interview with respect to medical needs from a custody arrest-booking officer to trained medical personnel. This will expand the staffing pattern required for women under the WDC consent decree to male and female arrestees alike.
- Provision of additional medical personnel (MD, PA, RN, and LPN) on all shifts at CBIF to supplement the existing staff that was anticipated only to perform intake physical examinations.
- Establishment of an on-site pharmacy with a pharmacist to eliminate the time delay in the receipt of medications for mental illness and chronic medical conditions.
- Increased supervision and improved administration of the overall medical system at DPDS by establishing an Administrator, Medical Director, and Director of Mental Health for DPDS separate from the rest of the Baltimore region, and providing a separate Director of Nursing for CBIF and BCDC.

In the August 2002 letter from DOJ to the Governor, it was noted that the U.S. Attorney General has the authority to "institute a lawsuit to correct deficiencies of the kind identified in this letter." To avoid such a result, the Department's counsel has been negotiating with DOJ to permit a phased in response to the broad condemnation of conditions consistent with budgetary concerns. The DOJ has expressed a willingness to work with the State without filing suit provided that significant progress is made and that the remediation begins immediately and is completed within a reasonable period of time. While recognizing the budgetary issues confronting State governments across the

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country, DOJ indicated that they could not wait for the budget issues to be resolved before the unconstitutional conditions were eliminated.

Sincerely,

A handwritten signature in black ink, appearing to read "R. B. Rosenblatt", with a long horizontal line extending to the right.

Richard B. Rosenblatt
Director

cc: Mary Ann Saar, Secretary
G. Lawrence Franklin, Assistant Secretary
Rhea Harris, Legislative Affairs Director
Luisa Heredia-Sauseda, DBM Budget Analyst
William M. Honablew, Jr., Legislative Analyst
Susan D. Dooley, Financial Services Director

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Mary Ann Saar, Esquire
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LaMont W. Flanagan
Commissioner

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The Honorable Joan Cadden
Chair, Subcommittee on Public Safety and Administration
Room 211
Lowe House Office Building
Annapolis, MD 21401-1991

Reference: Impact of Governor's Allowance on Operations

Dear Delegate Cadden:

The Division of Pretrial Detention and Services (DPDS) has been under-staffed and under-funded since the State took over the Baltimore City Jail in 1991. This continues to be the case with the Governor's allowance for FY2004. While the increases over the budget for FY2003 at least partially address some of the issues facing DPDS, the lack of proper funding continues to impact its operations. Overall, DPDS has never been sufficiently funded to cover the many inherent problems in its operations – increased staffing requirements, old, dilapidated facilities; insufficient vehicles for court transport; lack of maintenance of critical security technology; or provisions for mandated programs. This situation is currently exacerbated by additional major issues facing DPDS --

- Overcrowding which requires DPDS to open additional security staffing posts, for which there is no correctional officer positions and requires additional overtime expenditures.
- Compliance with the Federal Court consent degree for the heat-related issues at WDC required significant, unbudgeted expenditures in FY2003, which must be perpetuated.
- Responding to the findings of the Department of Justice will involve major financial commitments.
- Opening of the Hargrove District Courthouse will require additional resources for security and detainee transportation.
- Starting the mandated Special Education program requires additional overtime expenditures.

Major maintenance-related expenditures continue to be needed, such as replacement of 3 boilers in FY2003 at a cost of approximately \$250,000 and upgrading and restoring the security control systems at CBIF, at an estimated cost of up to \$600,000. Other areas where base level funding falls short of DPDS's needs include additional and replacement

security equipment, vehicle replacement, training, and programmatic support for the increasing population.

Almost 80% of the allowance each year is dedicated to staffing. Any significant reduction in the allowance generally means a reduction in staffing which directly impacts both operations and public safety. As a result of cost containment needs, DPDS lost numerous positions, including 23 Correctional Officers and 20 civilian positions. In addition, the increase in the budgeted turnover rate had the effect of reducing funding availability that results in more overtime expenditures. The Division has never been authorized sufficient staffing to meet the requirements to maintain adequate security. The loss of correctional officer positions ceases progress on the Division's goal to achieve full correctional staffing by FY 2004, as provided in the approved staffing plan. Expected savings in overtime expenditures from 42 new officers will be eliminated. Cost containment effort of locking down the Jail two days per week to control overtime will be required to continue for the entire year. At some point during the year, the lockdown may have to be increased to three days a week to counter increased overtime expenditures for which the current appropriation is insufficient. The lack of sufficient correctional officer staff will have further operational impact, including –

- Requiring shutdown or collapse of critical security posts to meet demand for security services (escort and surveillance) for mandated programs and services.
- Hindering the ability to meet current judiciary demands for escort services to accommodate current court operations.
- Continuing the temporary assignment, for two or more days a week, of special detail and support services officers to security posts, reducing productivity in Support Services areas and specialized security units, i.e. K-9, Intelligence and Special Security, by up to 60%.
- Reducing the frequency of searches of housing units and inmates in common areas for weapons, drugs and contraband, thereby placing at risk the personal safety of staff and inmates.
- Increasing behavioral problems with the inmate population by employing the lockdown strategy on a regular basis, especially during the summertime when internal temperatures in facilities are uncomfortable and housing areas are historically overcrowded.

This situation will financially impact the Division by requiring additional overtime expenditures for needs not anticipated in the appropriation. Programmatically, the Division will be unable to consistently maintain consent decree mandated programs for BCDC inmates. The impact on MFR includes --

- Difficulty in meeting Violence Reduction goals, i.e., increases in inmate-on-inmate assaults, inmate-on-officer assaults, and malicious destruction of property (fires and/or vandalism) due to decrease in housing unit shakedowns and perimeter searches for weapons, drugs and other contraband.
- Not meeting goals for reducing sick leave usage, as overtime requirements, either voluntary or draft, will ultimately provoke employee burn out and absenteeism.

DPDS is currently short over 100 Correctional Officer positions and approximately 14 supervisor positions to reach the level of staffing to safely and efficiently maintain operations.

Abolishing civilian positions impacts operations and public safety by diverting resources from other critical areas. Critical vacancies in certain areas are covered by detailing

Correctional Officers to the area. Once detailed, they are not available for security, which necessitates additional overtime expenditures by security. In addition, other of these positions, if filled, would perform critical program functions required by the consent decree and which are not being performed at the level mandated. The loss of administrative officer positions in the Pretrial Release Services Program (PRSP) may mean that the Case Management Section would not be able to continue to carry its current caseload. To keep caseloads at a level to preserve public safety, the PRSP may have to decline court commissioner referrals and to decline supervision of defendants with minor cases and conditional bails. Failure to maintain a cap on number of defendants supervised by PRSP will jeopardize the MFR goal of keeping arrest rate of supervised clients under 5%.

In conclusion, the additional demands of overcrowding, court mandated requirements, and Federal issues with offender rights require additional resources in an environment where base-level funding has not been obtained.

Sincerely,

LaMont W. Flanagan
Commissioner

cc: Mary Ann Saar, Secretary
G. Lawrence Franklin, Assistant Secretary
Benjamin F. Brown, Deputy Commissioner, DPDS
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